

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA
SOUTHERN DIVISION

RECEIVED

2007 MAR 12 A 9:40

BERNARD HACKETT, CLERK
U.S. DISTRICT COURT
MIDDLE DISTRICT ALA

WILLIE McCRAY, #183709

Petitioner,

v.

WILLIE THOMAS, et al.,

Defendant.

Case No.

1:06-CV-1107-WKW

AFFIDAVIT

STATE OF ALABAMA)
)
HOUSTON COUNTY)

Before me, the undersigned authority in and for said County and State personally appeared Brent Howard Gourley, Esq., who is known to me, and who, being first duly sworn, deposes and says as follows:

My name is Brent Howard Gourley, shareholder of the law firm of Klemm and Gourley, P.C. I served as counsel for Petitioner Willie McCray for his Rule 32 Request for Post Trial relief and as his appellate counsel on the appeal of the denial of his Rule 32.

Mr McCray is correct in that I did not notify him in a timely manner as to the affirmation of the denial of his Rule 32 Petition.

Mr McCray states on page 3 of the Petitioner's Motion to Show Cause Why The Petition Should Not Be Dismissed "1) That Court Appointed Counsel did not notify McCray that the Appellate Court had Affirmed his Direct Appeal, from his second Trial." I did not represent McCray during his second trial, nor did I write the appeal of that conviction. Therefore I did not notify him. I believe his appointed attorney at that time was Hon. Joe

Lewis. The trial court allowed Mr. Lewis to withdraw prior to the Rule 32 hearing. The Court file indicates McCray had several attorneys before Mr. Lewis, including Matt Lamere, Tom Brantley, and Chris Capps.

My files do not support Mr. McCray's contention that I told him I would file a petition for writ of certiorari. In my last letter to him, although untimely, I specifically told him I would not do so. A copy is enclosed at Exhibit G. Neither do I recall so advising him verbally during our brief meeting during the Rule 32 hearing.

The time-line for my representation of McCray appears from my records to be thus:

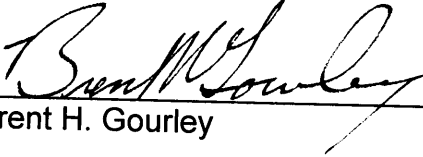
March 3, 2006	Appointed and opened file in this office.
April 19, 2006	Hearing on his Rule 32 petition.
April 21, 2006	Received notice of Denial of Rule 32.
April 21, 2006	Letter to client: Rule 32 denied. Exhibit A
May 2, 2006	Letter to client concerning appeal. Exhibit B
May 3, 2006	Filed notice of appeal of denial of his Rule 32
July 19	Filed by U.S. Mail a no-merit <i>Anders</i> brief and motion to withdraw.
July 24	Received Order from Ala.Crim.App. acknowledging my filing of <i>Anders</i> no-merit brief and motion to withdraw. Court gave McCray until August 10 to file a list of his issues. The Ala.Crim.App. did not, and apparently not longer, issues an order allowing the attorney to actually withdraw. Exhibit C
Aug 18	Received Order that Ala.Crim.App. will take notice of its own record in his previous appeal; and granted him an additional 21 days to file his <i>pro se</i> issues. Exhibit D.

Oct 30 Received the Memorandum of the Ala.Crim.App., release date of
October 27, affirming the judgement of the trial court. Exhibit E.
Nov. 20 Received the Certificate of Judgement. Exhibit F.
Nov. 20 My last letter to McCray. Exhibit G

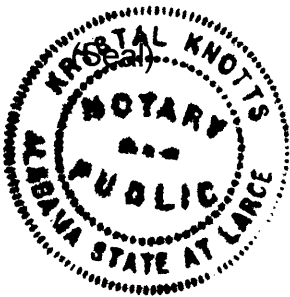
The Orders of the Alabama Court of Criminal Appeals indicate that the court sent
copies to McCray. The Memorandum does not carry that notation.

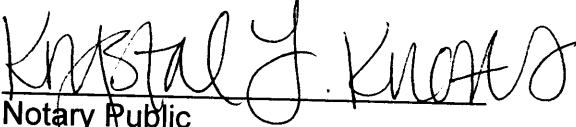
Further the affiant saith not.

Dated this 6 of March, 2007


Brent H. Gourley

Sworn to and subscribed before me this 6th of March, 2007.




Notary Public
My Commission expires: 2-28-10

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA
SOUTHERN DIVISION

WILLIE McCRAY, #183709

Petitioner,

v.

WILLIE THOMAS, et al.,

Defendant.

Case No.

1:06-CV-1107-WKW

2007 MAR 12 A 9:39

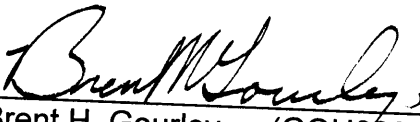
RECEIVED
J. DAVID HACKETT, CLERK
U.S. DISTRICT COURT
MIDDLE DISTRICT ALA

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the enclosed affidavit upon the below-named individual(s) by either hand delivery or by placing a copy of the same in the United States Mail, postage prepaid and correctly addressed:

Attorney General of the State of Alabama, Honorable Troy King, Alabama State House, Room 303, 11 South Union Street, Montgomery, AL 36130

Done this the 6 day of March, 2007.


Brent H. Gourley (GOU006)
Klemm & Gourley, P.C.
128 South Oates Street
Dothan, AL 36301 (334) 774-3840

KLEMM & GOURLEY, P.C.

Attorneys at Law

www.klemmgourley.com

128 South Oates Street
Dothan, Alabama 36301-1635

Richard R. Klemm

Brent H. Gourley

Ozark: (334) 774-3840
Dothan: (334) 677-7734
Enterprise: (334) 393-0337
Fax: (334) 678-7284

April 21, 2006

Mr Willie C McCray AIS 183709
Elmore Correctional Facility
PO Box 8
Elmore AL 36025

re: State of Alabama v. Willie McCray AIS 183709

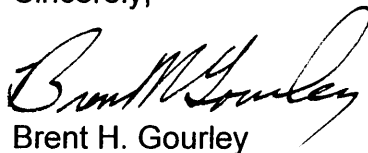
Dear Mr McCray:

On April 19, 2006, the date of our recent hearing, Judge White denied your Request for Post Trial relief made pursuant to Rule 32 of the Alabama Rules of Criminal Procedure. I enclose a copy of the case action summary.

Please advise in writing, soon, if you would like me make notice of appeal and, additionally, if you would like me to write that appeal. Without your written confirmation, I will not proceed. I do not believe you have much chance of success at appeal; I have been unable to find any case law supporting your position concerning the redacted indictment. In DUI cases, the judge can be required to do just what Judge White did in your case: strike from the indictment words that the jury should not hear.

You may write to this office with your questions. You have 42 days from April 19 to enter your notice of appeal.

Sincerely,


Brent H. Gourley

BHG/
enclosure

Exhibit A

KLEMM & GOURLEY, P.C.
Attorneys at Law

www.klemmgourley.com

128 South Oates Street
Dothan, Alabama 36301-1635

Richard R. Klemm
Brent H. Gourley

Ozark: (334) 774-3840
Dothan: (334) 677-7734
Enterprise: (334) 393-0337
Fax: (334) 678-7284

April 21, 2006

Mr Willie C McCray AIS 183709
Elmore Correctional Facility
PO Box 8
Elmore AL 36025

re: State of Alabama v. Willie McCray AIS 183709

Dear Mr McCray:

On April 19, 2006, the date of our recent hearing, Judge White denied your Request for Post Trial relief made pursuant to Rule 32 of the Alabama Rules of Criminal Procedure. I enclose a copy of the case action summary.

Please advise in writing, soon, if you would like me make notice of appeal and, additionally, if you would like me to write that appeal. Without your written confirmation, I will not proceed. I do not believe you have much chance of success at appeal; I have been unable to find any case law supporting your position concerning the redacted indictment. In DUI cases, the judge can be required to do just what Judge White did in your case: strike from the indictment words that the jury should not hear.

You may write to this office with your questions. You have 42 days from April 19 to enter your notice of appeal.

Sincerely,

Brent H. Gourley

BHG/
enclosure

Exhibit B

COURT OF CRIMINAL APPEALS**STATE OF ALABAMA**

H. W. "BUCKY" McMILLAN
Presiding Judge
SUE BELL COBB
PAMELA W. BASCHAB
GREG SHAW
A. KELLI WISE
Judges

**RECEIVED****JUL 24 2006**

Per.....

Lane W. Mann
Clerk
Gerri Robinson
Assistant Clerk
(334) 242-4590
Fax (334) 242-4689

CR-05-1474

Willie C. McCray v. State of Alabama (Appeal from Houston Circuit Court:
CC94-791.60)

ORDER

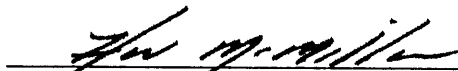
Counsel for the appellant in the above referenced cause has filed a no-merit brief and a motion to withdraw as required by *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967). Counsel has also advised this Court that the appellant was served a copy of the no-merit brief and furnished with the appellant's copy of the record on appeal

Upon consideration of the above, the Court of Criminal Appeals hereby **ORDERS** as follows:

The appellant shall have until August 10th 2006, to serve this Court with a list of each and every point or issue the appellant wants considered in this appeal.

If, by August 10th 2006, the appellant fails to identify any additional issues or points to be considered on appeal, the Court will then determine what action should be taken pursuant to *Anders v. State of California*, and will notify the appellee when and if a brief will be required.

Done this the 20th day of July, 2006.


H. W. "Bucky" McMillan, Presiding Judge
Court of Criminal Appeals

cc: Brent H. Gourley, Attorney
Willie C. McCray, Pro Se
Office of Attorney General

Exhibit C

COURT OF CRIMINAL APPEALS

STATE OF ALABAMA

H. W. "BUCKY" McMILLAN
Presiding Judge
SUE BELL COBB
PAMELA W. BASCHAB
GREG SHAW
A. KELLI WISE
Judges



Lane W. Mann
Clerk
S. Robinson
Assistant Clerk
(204) 242-4590
Fax (204) 242-4689

RECEIVED

AUG 18 2006

Per.....

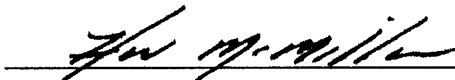
CR-05-1474

Willie C. McCray v. State of Alabama (Appeal from Houston Circuit Court:
CC94-791.60)

ORDER

This Court will take judicial notice of its record in CR-00-0241, McCray's direct appeal from his murder and theft convictions. McCray is given an additional 21 days to file his pro se issues.

Done this the 16th day of August, 2006.


H. W. "Bucky" McMillan, Presiding Judge
Court of Criminal Appeals

cc: Brent H. Gourley, Attorney ✓
Willie C. McCray, Pro Se
Office of Attorney General

Exhibit D

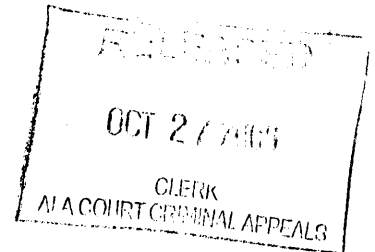
Notice: This unpublished memorandum should not be cited as precedent. See Rule 54, Ala.R.App.P. Rule 54(d), states, in part, that this memorandum "shall have no precedential value and shall not be cited in arguments or briefs and shall not be used by any court within this state, except for the purpose of establishing the application of the doctrine of law of the case, res judicata, collateral estoppel, double jeopardy, or procedural bar."

Court of Criminal Appeals

State of Alabama

RECEIVED
RECEIVED
OCT 30 2006
OCT 30 2006
Judicial Building, 300 Dexter Avenue
P. O. Box 301555
Montgomery, AL 36130-1555

Per.....



H.W."BUCKY" McMILLAN
Presiding Judge
SUE BELL COBB
PAMELA W. BASCHAB
GREG SHAW
A. KELLI WISE
Judges

Lane W. Mann
Clerk
Gerri Robinson
Assistant Clerk
(334) 242-4590
Fax (334) 242-4689

MEMORANDUM

CR-05-1474

Houston Circuit Court CC-94-791.60

Willie C. McCray v. State of Alabama

WISE, Judge.

The appellant, Willie C. McCray, appeals from the trial court's denial of his petition for postconviction relief, filed pursuant to Rule 32, Ala.R.Crim.P., in which he attacked his 2000 convictions for felony murder and first-degree theft, and his resulting sentences of 99 years' imprisonment for felony murder and 20 years' imprisonment for the theft conviction. On November 11, 2001, this Court affirmed McCray's convictions and sentences, by unpublished memorandum. McCray v. State (No. CR-00-0241), 851 So. 2d 631

Exhibit E

THE STATE OF ALABAMA - - JUDICIAL DEPARTMENT

THE ALABAMA COURT OF CRIMINAL APPEALS

CR-05-1474

Willie C. McCray v. State of Alabama (Appeal from Houston Circuit Court:
CC94-791.60)

RECEIVED
NOV 20 2006
Per

CERTIFICATE OF JUDGMENT

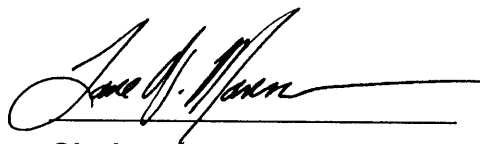
WHEREAS, the appeal in the above referenced cause has been duly submitted and considered by the Court of Criminal Appeals; and

WHEREAS, the judgment indicated below was entered in this cause on October 27th 2006:

Affirmed by Memorandum.

NOW, THEREFORE, pursuant to Rule 41 of the Alabama Rules of Appellate Procedure, it is hereby certified that the aforesaid judgment is final.

Witness, Lane W. Mann, Clerk
Court of Criminal Appeals, on this
the 17th day of November, 2006.



**Clerk
Court of Criminal Appeals
State of Alabama**

cc: Hon. Jerry White, Special TC Judge
Hon. Judy Byrd, Circuit Clerk
Brent H. Gourley, Attorney
Willie C. McCray, Pro Se
Office of Attorney General

Exhibit G

KLEMM & GOURLEY, P.C.

Attorneys at Law

www.kgpclaw.com

128 South Oates Street
Dothan, Alabama 36301-1635

Richard R. Klemm

Brent H. Gourley

Ozark: (334) 774-3840
Dothan: (334) 677-7734
Enterprise: (334) 393-0337
Fax: (334) 678-7284

November 20, 2006

Mr Willie C McCray AIS 183709
Elmore Correctional Facility
PO Box 8
Elmore AL 36025

re: State of Alabama v. Willie McCray (CR 05-1474)

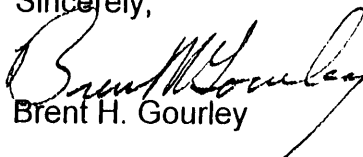
Dear Mr McCray:

The Alabama Court of Criminal Appeals has affirmed your conviction by its Memorandum of November 17, 2006. You should have received a copy of said document in the mail by now.

I write because the Court of Appeals did not grant my motion to withdraw from representation of you as your appellate counsel. As my appointment to represent you as indigent appellant only covers the appeal of right, which is now complete, and because I found no meritorious issues in that appeal, I will not request a rehearing or petition for certiorari of the Alabama Supreme Court.

I consider my representation of you in this matter complete. Good luck.

Sincerely,


Brent H. Gourley

BHG/

Exhibit F